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CLEARINGHOUSE RULE 97-132

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Section HFS 140.04 (1) (e) 2. indicates that “[p]ursuant to s. 254.59, Stats., [the local health department must] order the abatement or removal of human health hazards found on private premises *or*, if an owner or occupant fails to comply, enter the premises and abate or remove or contract for the abating or removal of the human health hazard.” (Emphasis added.) However, s. 254.59 (1), Stats., indicates that if the local health officer finds a human health hazard, he or she must “order the abatement or removal of the human health hazard on private premises, *within a reasonable period of time, and* if the owner or occupant fails to comply, the local health officer may enter upon the premises and abate or remove the human health hazard.” (Emphasis added.)

To make the rule consistent with the statute, two changes are necessary: (a) the statutory provision regarding a reasonable period of time should be added to the rule; and (b) the word “or” in the rule should be changed to “and.”

2. Form, Style and Placement in Administrative Code

a. In the title of ch. HFS 140, the word “Chapter” should be in solid capital letters. [See s. 1.05 (2) (a), Manual.]

b. The term “assessment” is defined in s. HFS 140.03 (1) as “the regular, systematic collection, assembly, analysis and dissemination of information on the health of the community.”

The defined term is then used in s. HFS 140.04 (1) (a) 1., which provides, in pertinent part, that a public health nurse may “[p]articipate in assessments of community health.”

The only other apparent use of the term “assessment” is in s. HFS 140.04 (1) (a) 3. a., which refers to “[a]ssessment of [the individual’s and family’s] current and emerging . . . health care needs.” It does not appear that the definition of “assessment” from s. HFS 140.03 (1) applies when the term is used in s. HFS 140.04 (1) (a) 3. a. Therefore, a different term should be used in s. HFS 140.04 (1) (a) 3. a. if the definition in s. HFS 140.03 (1) is retained. However, it may be possible to eliminate the definition and incorporate its terms into s. HFS 140.04 (1) (a) 1.

c. It appears that several terms defined in s. HFS 140.03 are not used in ch. HFS 140, namely, “health promotion,” as defined in s. HFS 140.03 (5); “other disease prevention,” as defined in s. HFS 140.03 (9); and “public health system,” as defined in s. HFS 140.03 (10). Unless a term is used, a definition should not be included for it.

d. In the Notes following ss. HFS 140.05 (1) (b) and 140.06 (1) (b), “*for the Year 2000*” should be inserted at the end of the title of the document.

e. Sections HFS 140.04 (3), 140.05 (3) and 140.06 (2) each require that a local health department submit an annual report to the Department of Health and Family Services (DHFS) in a format or on a form prescribed by DHFS. A reference to the form should be included in a note to the rule. A copy of the form must be attached to the rule, or a statement must be included indicating where a copy of the form may be obtained at no charge. [See s. 1.09 (2), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. Given the title of ch. HFS 140 and the fact that the rules are said to interpret s. 251.05 (2) to (6), Stats., it is unclear why ch. HFS 140 does not explicitly deal with all of the duties imposed on local health departments by s. 251.05 (3), Stats.

b. In the fourth paragraph of the analysis, the reference to “ch. HSS 145” should be changed to “ch. HFS 145.”

c. In the sentence preceding SECTION 1, in which the statutes interpreted by the rule are listed, it would appear to be more appropriate to refer to s. “251.05 (1) to (6)”, rather than referring to s. “251.05 (2) to (6)”.

d. Section HFS 140.03 (4) refers to “public health nurses qualified under . . . ch. HFS 139.” Can a narrower cite, such as s. HFS 139.08, be substituted?

e. Section HFS 140.02 refers in two places to “a local health department that chooses” to be a level II or level III department. Is this a choice made by the local health department or is it made by the local health board under s. 251.04 (2), Stats.?

f. Section HFS 140.04 (1) (c) 2. refers to disseminating “department-endorsed” prevention guidance and training persons about “department-endorsed” prevention techniques.

The rule does not explain the procedure for receiving endorsement by DHFS. If there is a statute or administrative rule regarding how endorsement occurs, a cross-reference to that statute or rule should be included. If there is no such statute or rule, it would be helpful if a provision were included in the rule explaining this.

g. Section HFS 140.04 (1) (f) provides that a local health department must report and investigate occurrences of occupational disease, environmental disease or exposure to a human health hazard “as required by any rules of the department promulgated under ss. 250.04 (7) and 254.02 (5), Stats.” A cross-reference to the rules themselves should be provided, rather than a reference to the statutes under which the rules are promulgated.

If the rules have not yet been promulgated and it is, therefore, impossible to comply with any requirement, it appears to be premature to include this provision. When such rules are promulgated, this requirement and the appropriate cross-reference could be added to s. HFS 140.04 as part of the proposed order promulgating the rules. If the rules have not yet been promulgated and DHFS chooses not to delete this provision in s. HFS 140.04 (1) (f), it would at least be helpful to add a note explaining that such rules do not currently exist so that the reader does not spend time trying to find them.

h. Sections HFS 140.05 (1) (c) and 140.06 (1) (d) indicate that a level II local health department and level III local health department, respectively, must enforce DHFS’s rules promulgated under ss. 252.23 (4) and 252.24 (4), Stats., for regulation of tattooists and tattoo establishments and regulation of body piercers and body-piercing establishments. A cross-reference to the rules themselves should be provided, rather than a reference to the statute under which the rules are promulgated.

If the rules have not yet been promulgated, the previous comment also applies to these provisions.

i. Section HFS 140.07 (6) provides that a local health department is presumed to be a level I local health department until DHFS finds otherwise following a “review under this section.” There are two types of review under s. HFS 140.07, namely the review under s. HFS 140.07 (1) and a different review under s. HFS 140.07 (5) (c). It appears that s. HFS 140.07 (6) intends to refer to the review under s. HFS 140.07 (1). If this is the intention, the language quoted above should be changed to a “review under sub. (1)” in order to avoid ambiguity as to which review is at issue.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the seventh line of the fourth paragraph of the analysis, it appears that the first use of the word “and” should be deleted and that a semicolon should be inserted preceding the last use of the word “and” on that line. It appears that this change is needed in order to separate the items in a series.

b. Section HFS 140.02 refers to a “level II department” and to a “level III department.” However, “department” is defined in s. HFS 140.03 (2) and refers to DHFS. It would be preferable to change s. HFS 140.02 to refer to a “level II local health department” and a “level III local health department.”

c. The rule is inconsistent with respect to how the concept of arranging for the provision of services, as opposed to providing the services, is expressed. For example, ss. HFS 140.04 (1) (intro.), 140.05 (1) (a) and 140.06 (1) (a) all refer to “provide or arrange for provision of” certain services; s. HFS 140.04 (1) (a) 3. (intro.) refers to “[p]rovide or otherwise arrange for” certain services and also refers to “provide . . . or otherwise arrange for the availability of” certain services; ss. HFS 140.05 (1) (b) (intro.) and 140.06 (1) (b) (intro.) refer to “provide or arrange for” services; and s. HFS 140.04 (1) (a) 2. refers to “[p]rovide or otherwise arrange for the availability of” certain services. Unless substantive differences are intended, it would be preferable to select one way of expressing this concept and to use this expression consistently throughout the rule.

Also, with respect to the general concept of having someone other than staff of the local health department actually provide services, it is noted that s. 251.04 (1), Stats., specifies that a local board of health (not the local health department) may contract or subcontract to provide public health services and further specifies that the contractor’s staff must meet the appropriate qualifications for positions in a level I local health department.

d. Several provisions which serve as introductions to lists are ambiguous and should be revised. In general, language which introduces a list should include language such as “all of the following:”, “any of the following:” or “[a specified number] of the following:”. Without such clarifying language, there may be ambiguity as to whether all or only some of the items listed satisfy the requisite conditions. This comment applies to all of the following:

- (1) Section HFS 140.04 (1) (a) (intro.), which indicates that public health nurses “may do the following as directed by the appropriate local authority:”. This should be clarified by stating that the nurses may do “all of the following as directed by the appropriate local authority:” or “any of the following as directed by the appropriate local authority:”.
- (2) Section HFS 140.04 (1) (a) 3. (intro.), which indicates that certain nursing and clinical preventive services are to be provided “through:” Various items are then listed in s. HFS 140.04 (1) (a) 3. a. to d. If it is intended that the nursing and clinical preventive services are to be provided by doing all of the items listed in s. HFS 140.04 (1) (a) 3. a. to d., this should be clarified by stating that the nursing or clinical preventive services are to be provided “by doing all of the following:”.
- (3) Section HFS 140.04 (1) (c) (intro.), which provides that “[t]hese services shall include:”. Various items are then listed in s. HFS 140.04 (1) (c) 1. to 4. Section HFS 140.04 (1) (c) (intro.) should be clarified by stating whether “all of the following” services must be included or only a certain number of them.

e. In s. HFS 140.04 (1) (a) 3. a., one use of the word “health” should be eliminated.

f. Section HFS 140.04 (1) (a) 3. b. indicates that there must be development of effective, efficient and equitable nursing plans of care for families and individuals who will be receiving services “for a period of time.” It is not clear what that period of time must be, for

example, one month, two months, six months, a year or some other time period. Thus, it is not clear when nursing plans must be developed.

g. Section HFS 140.05 (1) (b) (intro.) requires that a level II local health department provide or arrange for services that address “one objective” from each section of sections 2 to 8 of a specified publication. Similarly, s. HFS 140.06 (1) (b) (intro.) requires that a level III local health department provide or arrange for services that address “3 objectives” from each of these sections of that publication. The words “at least” should be inserted in both provisions for consistency with s. 251.20 (2) and (3), Stats.

h. Section HFS 140.05 (1) (b) (intro.) indicates that a level II local health department must “maintain documentation” of all of the items listed in s. HFS 140.05 (1) (b) 1. to 4. Similarly, s. HFS 140.06 (1) (b) (intro.) indicates that a level III local health department must “show evidence” of all of the items listed in s. HFS 140.06 (1) (b) 1. to 4. The items listed in each respective section are almost identical. It is not clear how long the documentation must be maintained by a level II local health department, nor is it clear to whom a level III local health department must show this evidence. Further, it is not clear what difference is intended between the requirement to “maintain documentation” versus the requirement to “show evidence.” This should be clarified.